

AMENDED IN SENATE MARCH 16, 1998  
AMENDED IN ASSEMBLY JANUARY 28, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

## ASSEMBLY BILL

**No. 357**

**Introduced by Assembly Member Havice**

February 19, 1997

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An act to amend *Section 2 of Proposition 184 of the November 8, 1994, general election*, and to amend *Section 1192.7, 1192.8*, of the Penal Code, relating to crimes.

### LEGISLATIVE COUNSEL'S DIGEST

AB 357, as amended, Havice. Crimes: ~~stolen property~~  
*serious felonies*.

(1) Existing law, amended by initiative statute, prohibits plea bargaining in any case in which the indictment or information charges any serious felony, ~~as defined including assault with intent to commit rape or robbery and exploding a destructive device or explosive causing great bodily injury or mayhem~~, except in specified circumstances. The initiative statute provides that any amendment of its provisions by the Legislature shall require a  $\frac{2}{3}$  vote of the membership of each house.

This bill would ~~include receiving stolen property involving a firearm as a serious felony for purposes of this prohibition on plea bargaining~~ revise these 2 offenses to include additional elements and add all of the following offenses for purposes of this prohibition:

(a) *Receiving stolen property involving a firearm as a serious felony.*

(b) *Assault with caustic chemicals or flammable substances.*

(c) *Assault with a deadly weapon or instrument on a firefighter.*

(d) *Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft.*

(e) *Rape by foreign object.*

(f) *Willfully and maliciously discharging a firearm from a motor vehicle or willfully and maliciously discharging a firearm from a motor vehicle at another person other than an occupant of a motor vehicle.*

(g) *Intimidation of victims or witnesses.*

(h) *A terrorist threat.*

(i) *Use of a firearm in the commission of any of specified felonies.*

(j) *Burglary in the first degree.*

Because it would amend an initiative statute, the bill would require a  $2/3$  vote.

By including this crime in the definition of “serious felony,” the bill would increase the costs of prosecuting those crimes and thereby impose a state-mandated local program.

(2) Existing law provides a sentence enhancement for any person who, while armed with a firearm and in the commission or attempted commission of any felony, possesses armor-piercing ammunition, or who wears a bullet-resistant body vest in the commission or attempted commission of a violent offense.

This bill would provide a sentence enhancement of 1, 2, or 3 years for any person who takes a firearm in a robbery or burglary or who receives a firearm as stolen property. By increasing the punishment for existing crimes, this bill would impose a state-mandated local program.

(3) *Section 2 of Proposition 184 of the November 8, 1994, general election provides that all references to existing statutes are to statutes as they existed on June 30, 1993. This proposition provides that any amendment to its provisions by the Legislature shall require a  $2/3$  vote of the membership of each house.*

*This bill instead would provide that all references are to statutes as they existed on the effective date of the amendment made to this provision at the 1997–98 Regulation Session of the Legislature.*

*(4) This bill would make conforming changes.*

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1192.7 of the Penal Code is  
2 amended to read:

3 1192.7. (a) Plea bargaining in any case in which the  
4 indictment or information charges any serious felony, any  
5 felony in which it is alleged that a firearm was personally  
6 used by the defendant, or any offense of driving while  
7 under the influence of alcohol, drugs, narcotics, or any  
8 other intoxicating substance, or any combination thereof,  
9 is prohibited, unless there is insufficient evidence to  
10 prove the people's case, or testimony of a material witness  
11 cannot be obtained, or a reduction or dismissal would not  
12 result in a substantial change in sentence.

13 (b) As used in this section, "plea bargaining" means  
14 any bargaining, negotiation, or discussion between a  
15 criminal defendant, or his or her counsel, and a  
16 prosecuting attorney or judge, whereby the defendant  
17 agrees to plead guilty or nolo contendere, in exchange for  
18 any promises, commitments, concessions, assurances, or  
19 consideration by the prosecuting attorney or judge  
20 relating to any charge against the defendant or to the  
21 sentencing of the defendant.

22 (c) As used in this section, "serious felony" means any  
23 of the following:

24 (1) Murder or voluntary manslaughter.

- 1 (2) Mayhem.
- 2 (3) Rape.
- 3 (4) Sodomy by force, violence, duress, menace, threat
- 4 of great bodily injury, or fear of immediate and unlawful
- 5 bodily injury on the victim or another person.
- 6 (5) Oral copulation by force, violence, duress, menace,
- 7 threat of great bodily injury, or fear of immediate and
- 8 unlawful bodily injury on the victim or another person.
- 9 (6) Lewd or lascivious act on a child under the age of
- 10 14 years.
- 11 (7) Any felony punishable by death or imprisonment
- 12 in the state prison for life.
- 13 (8) Any ~~other~~ felony in which the defendant
- 14 personally inflicts great bodily injury on any person, other
- 15 than an accomplice, or any felony in which the defendant
- 16 personally uses a firearm.
- 17 (9) Attempted murder.
- 18 (10) Assault with intent to commit rape, *mayhem*,
- 19 *sodomy*, *oral copulation*, or robbery.
- 20 (11) Assault with a deadly weapon or instrument on a
- 21 peace officer.
- 22 (12) Assault by a life prisoner on a noninmate.
- 23 (13) Assault with a deadly weapon by an inmate.
- 24 (14) Arson.
- 25 (15) Exploding a destructive device or any explosive
- 26 with intent to injure.
- 27 (16) Exploding a destructive device or any explosive
- 28 causing *injury*, great bodily injury or mayhem.
- 29 (17) Exploding a destructive device or any explosive
- 30 with intent to murder.
- 31 (18) Burglary of an inhabited dwelling house, or trailer
- 32 coach as defined by the Vehicle Code, or inhabited
- 33 portion of any other building.
- 34 (19) Robbery or bank robbery.
- 35 (20) Kidnapping.
- 36 (21) Holding of a hostage by a person confined in a
- 37 state prison.
- 38 (22) Attempt to commit a felony punishable by death
- 39 or imprisonment in the state prison for life.



1 (23) Any felony in which the defendant personally  
2 used a dangerous or deadly weapon.

3 (24) Selling, furnishing, administering, giving, or  
4 offering to sell, furnish, administer, or give to a minor any  
5 heroin, cocaine, phencyclidine (PCP), or any  
6 methamphetamine-related drug, as described in  
7 paragraph (2) of subdivision (d) of Section 11055 of the  
8 Health and Safety Code, or any of the precursors of  
9 methamphetamines, as described in subparagraph (A) of  
10 paragraph (1) of subdivision (f) of Section 11055 or  
11 subdivision (a) of Section 11100 of the Health and Safety  
12 Code.

13 (25) Any violation of subdivision (a) of Section 289  
14 where the act is accomplished against the victim's will by  
15 force, violence, duress, menace, or fear of immediate and  
16 unlawful bodily injury on the victim or another person.

17 (26) Grand theft involving a firearm.

18 (27) Carjacking.

19 (28) Any violation of Section 496 involving a firearm.

20 (29) *Any violation of Section 288.5.*

21 (30) *Any violation of Section 244.*

22 (31) *Assault with a deadly weapon or instrument on a*  
23 *firefighter.*

24 (32) *Discharge of a firearm at an inhabited dwelling,*  
25 *vehicle, or aircraft.*

26 (33) *Any violation of Section 264.1.*

27 (34) *A violation of subdivision (c) or (d) of Section*  
28 *12034.*

29 (35) *Intimidation of victims or witnesses, in violation*  
30 *of Section 136.1.*

31 (36) *A violation of Section 422.*

32 (37) *Any violation of Section 12022.53.*

33 (38) *Any burglary of the first degree.*

34 (39) Any attempt to commit a crime listed in this  
35 subdivision other than an assault.

36 ~~(39)~~

37 (40) Any conspiracy to commit an offense described in  
38 paragraph (24) as it applies to Section 11370.4 of the  
39 Health and Safety Code where the defendant conspirator

1 was substantially involved in the planning, direction, or  
2 financing of the underlying offense.

3 (d) As used in this section, “bank robbery” means to  
4 take or attempt to take, by force or violence, or by  
5 intimidation from the person or presence of another any  
6 property or money or any other thing of value belonging  
7 to, or in the care, custody, control, management, or  
8 possession of, any bank, credit union, or any savings and  
9 loan association.

10 As used in this subdivision, the following terms have the  
11 following meanings:

12 (1) “Bank” means any member bank of the Federal  
13 Reserve System, and any bank, banking association, trust  
14 company, savings bank, or other banking institution  
15 organized or operating under the laws of the United  
16 States, and any bank the deposits of which are insured by  
17 the Federal Deposit Insurance Corporation.

18 (2) “Savings and loan association” means any federal  
19 savings and loan association and any “insured institution”  
20 as defined in Section 401 of the National Housing Act, as  
21 amended, and any federal credit union as defined in  
22 Section 2 of the Federal Credit Union Act.

23 (3) “Credit union” means any federal credit union and  
24 any state-chartered credit union the accounts of which  
25 are insured by the Administrator of the National Credit  
26 Union Administration.

27 (e) The provisions of this section shall not be amended  
28 by the Legislature except by statute passed in each house  
29 by rollcall vote entered in the journal, two-thirds of the  
30 membership concurring, or by a statute that becomes  
31 effective only when approved by the electors.

32 SEC. 2. *Section 1192.8 of the Penal Code is amended*  
33 *to read:*

34 1192.8. (a) ~~For purposes of subdivision (c) of Section~~  
35 ~~1192.7, “serious felony” also means any violation of~~  
36 ~~Section 288.5.~~

37 ~~(b)~~ For purposes of subdivision (c) of Section 1192.7,  
38 “serious felony” also means any violation of Section 191.5,  
39 paragraph (1) or (3) of subdivision (c) of Section 192,  
40 paragraph (a) or (c) of Section 192.5 of this code, or

1 Section 2800.3, subdivision (b) of Section 23104, or Section  
2 23153 of the Vehicle Code, when any of these offenses  
3 involve the personal infliction of great bodily injury on  
4 any person other than an accomplice, or the personal use  
5 of a dangerous or deadly weapon, within the meaning of  
6 paragraph (8) or (23) of subdivision (c) of Section 1192.7.

7 ~~(e)~~

8 (b) It is the intent of the Legislature, in enacting  
9 subdivision (b), to codify the court decisions of *People v.*  
10 *Gonzales*, 29 Cal. App. 4th 1684, and *People v. Bow*, 13 Cal.  
11 App. 4th 1551, and to clarify that the crimes specified in  
12 subdivision (b) have always been, and continue to be,  
13 serious felonies within the meaning of subdivision (c) of  
14 Section 1192.7.

15 SEC. 3. Section 2 of Proposition 184 of the November  
16 8, 1994, general election, is amended to read:

17 SECTION. 2. All references to existing statutes are to  
18 statutes as they existed on ~~June 30, 1993~~ *the effective date*  
19 *of the amendment made to this section at the 1997–98*  
20 *Regular Session of the Legislature.*

21 SEC. 4. No reimbursement is required by this act  
22 pursuant to Section 6 of Article XIII B of the California  
23 Constitution because the only costs that may be incurred  
24 by a local agency or school district will be incurred  
25 because this act creates a new crime or infraction,  
26 eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section  
28 17556 of the Government Code, or changes the definition  
29 of a crime within the meaning of Section 6 of Article  
30 XIII B of the California Constitution.

31 Notwithstanding Section 17580 of the Government  
32 Code, unless otherwise specified, the provisions of this act  
33 shall become operative on the same date that the act  
34 takes effect pursuant to the California Constitution.